

Exhibit A

In the Matter of:

Turing Pharmaceuticals & Impax Laboratories

September 26, 2019
Akeel Mithani

Condensed Transcript with Word Index



For The Record, Inc.
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Turing Pharmaceuticals & Impax Laboratories

9/26/2019

1 FEDERAL TRADE COMMISSION
 2 TURING PHARMACEUTICALS,)
 3 a corporation,)
 4 and) Matter No.
 5 IMPAX LABORATORIES,) 161-0001
 6 a corporation.)
 7 -----)
 8
 9

10 Thursday, September 26, 2019
 11
 12 Room 7104
 13 Federal Trade Commission
 14 400 7th Street, S.W.
 15 Washington, D.C. 20024
 16

17 The above-entitled matter came on for
 18 investigational hearing, pursuant to notice, at
 19 9:00 a.m., for the testimony of:

20
 21 AKEEL MITHANI
 22
 23
 24
 25

1 APPEARANCES (continued):
 2 ALSO PRESENT: Jimmy Fang, Esq. - Deputy General
 3 Counsel Vyera
 4 Anusha Sunkara, FTC Law Clerk
 5 Arindam Ghosh, Ph.D. - FTC Economist
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1 APPEARANCES:
 2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:
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 5 Federal Trade Commission
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 9 nperlm@ftc.gov
 10 ON BEHALF OF VYERA PHARMACEUTICALS
 11 AND THE WITNESS:
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 19
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 22
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1 BY MR. PERLMAN:
 2 Q Mr. Mithani, could you state your full
 3 name for the record.
 4 A Akeel Mithani.
 5 Q So, Mr. Mithani, my name is Neal Perlman.
 6 I'm going to be asking you some questions today.
 7 Have you ever given sworn testimony
 8 before?
 9 A I have not.
 10 Q So I'm going to go over some ground rules
 11 just to make sure that this goes smoothly today.
 12 So, first of all, the first rule is, if
 13 you don't understand a question, just let me know,
 14 and I'll try to rephrase it. Sound good?
 15 A Yeah.
 16 Q The second ground rule is try to answer
 17 audibly for the court reporter. Nodding your head
 18 or shaking your head or saying uh-huh or huh-uh,
 19 it's hard for her to get it down.
 20 Does that make sense?
 21 A It makes sense.
 22 Q So the third ground rule is before -- try
 23 to wait until I finish my question before you
 24 answer, and I'll try to wait until you finish your
 25 answer, that way, again, she can get it down for the

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1 P R O C E E D I N G S
 2 - - - - -
 3 (The witness was duly sworn.)
 4 MR. PERLMAN: Could we have counsel
 5 identify themselves for the record.
 6 MR. WEINER: Sure. This is Michael Weiner
 7 from Dechert LLP for Vyera and the witness.
 8 MR. STELK: Samuel Stelk, also from
 9 Dechert, for Vyera and the witness.
 10 MR. FANG: James Fang, F-A-N-G, Deputy
 11 General Counsel, Vyera.
 12 MR. PERLMAN: Ms. Sunkara, you can
 13 introduce yourself.
 14 MS. SUNKARA: Anusha Sunkara, FTC Law
 15 Clerk.
 16 DR. GHOSH: Arindam Ghosh, Economist with
 17 the FTC.
 18 MR. BUTRYMOWICZ: Dan Butrymowicz, FTC.
 19 MR. PERLMAN: Neal Perlman Federal Trade
 20 Commission.
 21 Whereupon --
 22 AKEEL MITHANI,
 23 a witness, called for examination, having
 24 been first duly sworn, testified as follows:
 25 EXAMINATION

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1 record.
 2 Sound good?
 3 A Yeah.
 4 Q Did you do anything to prepare for your
 5 testimony today?
 6 A We had a prep yesterday, but that's about
 7 it.
 8 Q Did you talk with anyone other than your
 9 lawyers about your testimony today?
 10 A No.
 11 Q When you met with your lawyers, did you
 12 review any documents?
 13 A Yes.
 14 Q How many?
 15 A Approximately 70.
 16 Q Seventy?
 17 A Yeah.
 18 Q So do you understand you're testifying
 19 under oath today?
 20 A Yep.
 21 Q Is there anything that would prevent you
 22 from providing truthful, complete testimony today?
 23 A No.
 24 Q Okay. So one other thing I wanted to go
 25 over with you before I start to make sure we are on

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1 A Yes.
 2 Q **Did you communicate with Mr. Shkreli**
 3 **before he was incarcerated?**
 4 A Yes.
 5 Q **How often?**
 6 A I can't tell you. Maybe once a week.
 7 Q **How did you communicate with him?**
 8 A Cell phone or in-person meetings.
 9 Q **Texting?**
 10 A In-person meetings.
 11 Q **Texting?**
 12 A No.
 13 Q **No?**
 14 A It was largely just calling.
 15 Q **Calling on the cell phone?**
 16 A Or in-person meetings.
 17 MR. WEINER: What period of time are you talking about?
 18 THE WITNESS: Before incarceration.
 19 MR. WEINER: And after? We talked about earlier before when you were at the company you were --
 20 MR. PERLMAN: Sure. I can clarify, yeah, sure.
 21 BY MR. PERLMAN:

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1 e-mail?
 2 A Sure.
 3 Q **Did you e-mail him from your personal**
 4 **e-mail about Vyera-related business?**
 5 A Maybe.
 6 Q **During that time period are you aware**
 7 **whether anyone else from Vyera communicated with**
 8 **Mr. Shkreli?**
 9 A I would assume Kevin did, but I think that would be it.
 10 Q **No one else?**
 11 A I'm sure there were people, but I don't want to speak on their behalf.
 12 Q **Are you aware whether other people**
 13 **communicated with Mr. Shkreli?**
 14 A I'm not aware.
 15 Q **After Mr. Shkreli was incarcerated, did**
 16 **you communicate with him at all?**
 17 A Yeah.
 18 Q **How often?**
 19 A It depends. It would sometimes be once a week, sometimes once a month, sometimes once every two months.
 20 Q **How would you communicate with Mr. Shkreli**
 21 **after he was incarcerated?**

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1 Q **So I'm talking about the time from when**
 2 **you started at Vyera until he was incarcerated.**
 3 **We're clear?**
 4 A Yeah.
 5 Q **So you talked to him once a week after you**
 6 **joined --**
 7 A Yeah, sounds about right.
 8 Q **-- until he -- Okay.**
 9 Q **And you talked to him by phone?**
 10 A Yeah.
 11 Q **And you talked to him in person?**
 12 A Yeah.
 13 Q **Where would you meet him?**
 14 A At a bar close by or at his apartment.
 15 Q **Where is his apartment?**
 16 A It was a block away from our office.
 17 Q **Where is your office?**
 18 A Thirty-ninth and Third.
 19 Q **Other than the phone calls and in-person**
 20 **meetings, did you communicate with Mr. Shkreli in**
 21 **any other way after you joined Vyera, before he was**
 22 **incarcerated?**
 23 A Sure. I'm sure there were e-mails or texts, but I don't recall specific ones.
 24 Q **Did you e-mail him from your personal**

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1 A CorrLinks, calls.
 2 Q **What was the first thing?**
 3 A CorrLinks. It's an inmate messaging sort of e-mail service.
 4 Q **What would you discuss?**
 5 A From everything from rap music largely to how he's doing, and he would sometimes forward BD ideas and stock ideas.
 6 Q **Would you act on those BD ideas?**
 7 A I didn't really think very highly of his BD ideas because the company didn't have that much money to do the ideas that he was talking about.
 8 Q **Did Vyera ever act on any of his BD ideas?**
 9 A Yeah, we looked at it. Nothing came substantial of it.
 10 Q **So other than the CorrLinks, how else did**
 11 **you communicate with Mr. Shkreli in prison, if at**
 12 **all?**
 13 A He would call me.
 14 Q **Call you using what phone?**
 15 A The prison phone.
 16 Q **What's your cell phone number?**
 17 A Cell phone number is [REDACTED].
 18 Q [REDACTED].
 19 Q **I think you're missing a digit?**

20 (Pages 77 to 80)

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1 A [REDACTED]
 2 Q Oh, [REDACTED]. I heard [REDACTED]. I apologize.
 3 Did you ever talk to him via any other
 4 means?
 [REDACTED]

1 A I don't recall, but maybe some Journal
 2 articles that he had asked for, our books.
 3 Q **How many times did you ask people to mail**
 4 **things to Mr. Shkreli?**
 5 A It can't be more than a couple of times.
 6 Again, it's largely just books or one article that
 7 he's curious about, not...
 8 Q **Who did you ask to mail to Mr. Shkreli?**
 9 A Dan Fennessey.
 10 Q **How about Maureen Lohry?**
 11 A I don't know if the request was -- I know
 12 she would send mail, but I don't know if the request
 13 of X article was through me.
 14 Q **So Ms. Lohry might have been in contact**
 15 **with Mr. Shkreli?**
 16 A Sure.
 17 Q **During the period after you became a board**
 18 **member of Vyera but before Mr. Shkreli was**
 19 **incarcerated, did you discuss anything related to**
 20 **Daraprim with Mr. Shkreli?**
 21 A Before being a board member?
 22 Q Sorry. After being a board member, before
 23 he's incarcerated, did you -- let me just rephrase
 24 the question.
 25 Before you became a board member -- let me

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7 Q **Have you produced those WhatsApp messages**
 8 **to your counsel for us to review?**
 9 A I gave him my phone.
 10 Q **Did you ever visit Mr. Shkreli in prison?**
 11 A I did.
 12 Q **How many times?**
 13 A Once while he was at MDC, which I'm not
 14 sure if it was before the sentencing or not.
 15 Q **What did you discuss in that meeting?**
 16 A I don't recall much.
 17 Q **Have you ever mailed anything to**
 18 **Mr. Shkreli?**
 19 A I have not.
 20 Q **Have you ever asked anybody to mail any --**
 21 A I can't --
 22 Q **Let me finish.**
 23 A Yeah.
 24 Q **Have you ever asked anybody to mail**
 25 **anything to Mr. Shkreli?**

1 rephrase.
 2 After you became a board member but before
 3 Mr. Shkreli was incarcerated, did you discuss
 4 anything related to Daraprim with Mr. Shkreli?
 5 A Yeah, sure. He's a shareholder.
 6 Q **Did you discuss anything related to**
 7 **Daraprim with any other shareholders?**
 8 A Yeah.
 9 Q **Which ones?**
 10 A Anyone that would call up.
 11 Q **Who called up?**
 12 A David Chan called up, Opal Eye called up.
 13 Armistice called up.
 14 (Reporter requests clarification)
 15 THE WITNESS: Sure. David Chan, Steve
 16 Bohad, Opal Eye. That's the few I can remember off
 17 the top of my head.
 18 BY MR. PERLMAN:
 19 Q **What did you discuss with Mr. Shkreli**
 20 **related to Daraprim during that time period we are**
 21 **talking about?**
 22 A I can't recall off the top of my head.
 23 Q **Did Mr. Shkreli ever direct you to say**
 24 **anything to any of your business partners?**
 25 A Sure. He was helping out with BD at the

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1 time.

2 Q What did he say?

3 A I don't recall.

4 Q After Mr. Shkreli went to prison, did he
5 communicate with you about Daraprim?

6 A Yeah.

7 Q What did he say?

8 A I don't recall, but it's normal
9 shareholder -- just because he's incarcerated
10 doesn't stop him from being a normal shareholder.

11 Q Did Mr. Shkreli provide you any advice
12 related to Daraprim?

13 A I can't recall any.

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9 Q All right. You can set that document
10 aside.

11 MR. PERLMAN: We can go off the record.

12 (Luncheon recess taken -- 12:02 to 1:04 p.m.)

13 BY MR. PERLMAN:

14 Q Welcome back, Mr. Mithani. Do you
15 understand that you are still under oath?

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20 Q What is a backup supplier?

21 A A backup supplier is just in case your
22 main supplier has issues supplying.

23 Q Backup supplier --

24 A Backup supplier for your brand just in
25 case your main supplier has issues supplying

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1 A To track the -- to track the performance
2 of the company.

3 **Q Is it also to track where the Daraprim is
4 going?**

5 A The weekly reports I get, I don't think
6 they're detailed. Again, I could be wrong.

7 **Q Have you spoken with Ms. Kirby about --
8 let me rephrase that.**

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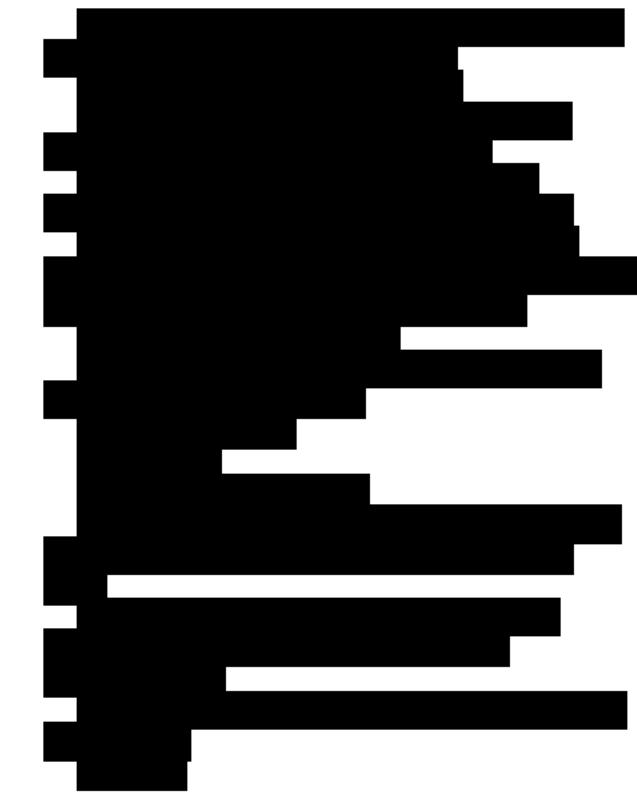
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51 (Pages 201 to 204)

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1 A Yes.
 2 Q If you go to the fourth paragraph down it
 3 reads:
 4 "Later that year, Martin afforded me the
 5 opportunity to be considered as a Junior
 6 Business Development Analyst even though
 7 I sorely lacked the qualifications."
 8 Do you see that?
 9 A Yes.
 10 Q Did you sorely lack the quantification to
 11 be a Junior Business Analyst at Vyera?
 12 A In terms of science, yeah.
 13 Q In what way were you qualified?
 14 A I understood the financials, how
 15 financials worked.
 16 Q Next it says:
 17 "My interviews met with mixed results."
 18 Do you see that?
 19 A Yes.
 20 Q What were the mixed results you were
 21 referencing?
 22 A The BD department didn't want someone so
 23 without any experience.
 24 Q Any experience in what?
 25 A Doing BD.

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1 good candidate?
 2 A Back two years ago, before my hire, yes.
 3 Q You can set that document aside.
 4 Well, actually, if you could take that
 5 back.
 6 A Sure.
 7 Q Is there anything that you would like to
 8 change or update about this document?
 9 A I mean I've got to read the whole thing
 10 again.
 11 Q Go for it.
 12 [REDACTED]
 13 [REDACTED]

BY MR. PERLMAN:

17 Q So I'd like you to turn back, I have this
 18 big stack of document here, if you would turn back
 19 and find GX1109. I just had a follow-up question on
 20 that document.

21 A Say that number again.

22 Q 1109.

23 MR. WEINER: Looks like this.

BY MR. PERLMAN:

24 Q You can take a minute to review it and

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1 Q "Despite opposition with the company.
 2 Martin directly lobbied for my
 3 employment."
 4 It's the next sentence. Do you see that?
 5 A Yes.
 6 Q Who did he lobby for your employment?
 7 A The BD department.
 8 Q But the BD department declined to bring
 9 you on?
 10 A Yeah.
 11 Q Was Mr. Shkreli still CEO at this point?
 12 A Yes.
 13 Q The next sentence says:
 14 "Currently, I am an Executive Director at
 15 Vyera Pharmaceuticals (formerly Turing)"
 16 Do you see that?
 17 A Yes
 18 Q To be clear, you were never a Junior
 19 Business Development Analyst at Vyera?
 20 A No.
 21 Q You started as an Executive Director at
 22 Vyera correct?
 23 A Board member, Executive Director, yeah.
 24 Q Despite the fact that the previous
 25 Business Development Group did not think you were a

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1 just let me know when you're done. To be clear I'm
 2 not going to ask any more questions on GX4001.

3 A Got it.

4 (Witness reviews document)

5 THE WITNESS: Go ahead.

BY MR. PERLMAN:

7 Q Okay. So if you look at GX1109-001, so at
 8 the bottom of that first page, you write to

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1 **Q** Which friends?
2 A Maureen Lohry when she was still around.
3 **Q** Who else?
4 A Dan Fennessy when he was still around.
5 **Q** Who else?
6 A I can't think of any others offhand.
7 **Q** Who were the lawyers that you communicated
8 with?
9 A I feel like it changed over time, but
10 lawyers I spoke with, I think the firm is Edward
11 King.
12 **Q** Edward King?
13 A Yeah.
14 **Q** Did you communicate with Benjamin Brafman
15 on behalf of Mr. Shkreli?
16 A I communicated with one of the associate,
17 Andrea at Brafman Associates, not him, Brafman
18 himself.
19 **Q** What's Andrea's last name?
20 A Zellan.
21 **Q** What was your the nature of your
22 communication with Ms. Zellan?
23 MR. WEINER: I need to -- was Ms. Zellan
24 ever a lawyer for you or the company?
25 THE WITNESS: No.

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1 MR. WEINER: Okay.

1 A Yes.
2 Q Any other e-mail accounts?
3 A I have a Mithani Akeel, which I don't
4 think I use.
5 Q Any other ones?
6 A I can't recall.
7 Q Have you provided your lawyers with all of
8 the e-mails that are concerning Daraprim?
9 A They have access to my Gmail.
10 Q They have access to your Gmail? Okay.
11 Do you ever delete e-mails from your Vyera
12 e-mail address?
13 A Sure, yeah.
14 Q Why?
15 A Just organizational purposes.
16 Q Are you aware that the FTC sent Turing a
17 Do-not-destroy letter in 2015?
18 A I was not aware in 2015, but all the
19 e-mails get backed up on the server any ways.
20 Q So any e-mails you would have deleted
21 would have been back up on the server?
22 A A hundred percent.
23 Q Do you ever delete any e-mails from your
24 Gmail accounts?
25 A Sure.

Let's go off the record.
(Recess taken - 3:38 to 3:47 p.m.)

1 **Q** Why?
2 **A** Organization purposes.
3 **Q** Did you ever delete any e-mails related to
4 the Vyera from your personal e-mail accounts?
5 **A** Sure.
6 **Q** So would those be backed up?
7 **A** They would not be backed up, but -- we
8 only entered a hold on past '17, right? We only
9 served recently?
10 **Q** I can't testify. It's only you answering
11 questions here.
12 **A** Again, once I was told there was a hold, I
13 did not delete any e-mails or e-mails in general.
14 **Q** Do you ever text about Vyera-related
15 business from your personal cell phone?
16 **A** Sure.
17 **Q** From your work cell phone?
18 **A** Yes.
19 **Q** Do you have two cell phones?
20 **A** Yes.
21 **Q** Have you produced those documents to us?
22 **A** Yes.
23 MR. PERLMAN: All right. Why don't we
24 take a five-minute break. I think I'm all set here,
25 but I'll let you guys know when I come back.

(Whereupon, the proceedings concluded at 4:57 p.m.)